IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.12.2007

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.No.35542 of 2007
and
M.P.No.1 of 2007

1. Ramalingam
2. K.P. Rajavelu
3. R. Govindasamy
4. V. Muthusamy
5. R. Subramaniam
6. K. Thangavel
7. P. Ganesan
8. K. Subramaniam
9. Ramasamy
10. C. Thangaraju
11. K. Mani
12. M. Kandasamy
13. G. Thangaraju
14. S. Ravi
15. Vaiyapuri .... Petitioners

vs

1. The Inspector General of Registration
   Registration Department
   Santhome High Road
   Chennai-600 028

2. The District Registrar (Societies)
   Namakkal District
   Trichy Road
   Namakkal Town
   Namakkal District

3. The Tahsildar
   Namakkal Taluk
   Namakkal

4. Navaladian Small farmers
   Lift Irrigation society
   (Registration No.33/94)
   (Administrtion-In-charge)
   S.P. Kandasamy Mohanur village
   Namakkal Taluk and District

.. Respondents

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Writ Petition filed Under Article 226 of the Constitution of

India praying this Court to issue a Writ of Mandamus for the relief as stated therein.

For petitioner : Mr.R. Bharathidhasan for
Mr.R. Karthikeyan

For respondents 1 to 3 : Mr.N. Senthilkumar
For 4th respondent : Mr.D. Krishnakumar

ORDER

The petitioners seek a Writ of Mandamus directing the first and second respondents to take action based on the representation made by the petitioners on 10.10.2007 and appoint an appropriate authority to enquire into the affairs of the 4th respondent Society.

2. The 4th respondent is a registered Society with the Registrar of Societies with an object to provide irrigation facilities to the agriculturists in and around the Mohanur village in Namakkal Taluk. Based on the request of the 4th respondent Association, the Government had sunk bore wells in the Cauvery Basin and pumped water through pipes to the lands belonging to the members of the 4th respondent. There was dispute regarding membership of the Society, which arose in the year 2003 and the petitioners were not allowed to participate in the election, which was conducted in the year 2003. This was challenged by filing a Writ Petition in W.P.No.18035 of 2003 by the petitioners. It is seen that the above writ petition was allowed on 23.12.2004. However, on appeal by the 4th respondent, the Division Bench has directed the petitioners to approach the Civil court, since civil dispute cannot be decided in the writ petition.

3. Pursuant to the direction of the Division Bench of this Court, the petitioner has filed O.S.No.216 of 2005 on the file of Sub Judge, Namakkal challenging the election conducted on 29.5.2003 and the same is pending as on date. In the meantime, there was some dispute regarding supply of water by the 4th respondent and there was Peace Committee Meeting, which was conducted by respondents 2 and 3, in which, the 4th respondent had also participated. Based on the said decision taken on 8.8.2005, the 4th respondent continues to supply water to the members of the 4th respondent and also to the petitioners.

4. The case of the 4th respondent is that the petitioners have ceased to be the members of the 4th respondent Society and whether they continue to be the member or not has to be decided by the Civil Court. The petitioner, having approached the Civil Court as per the direction of the Division Bench of this Court, cannot be stated to have any locus-standi to complain about the conduct of the 4th respondent in supplying water. In the representation given by the petitioners to the respondents 1 and 2 dated 10.10.2007, the petitioners have raised some allegations against the 4th respondent in respect of collection of amount and therefore, in the public interest, they want an enquiry to be conducted against the conduct of the 4th respondent.

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5. Mr.R. Karthikeyan, learned counsel for the petitioners submits that even though membership of the petitioners in the 4th respondent Society is in question, which is pending adjudication in the suit, inasmuch as admittedly the petitioners were also supplied water based on the arrangement entered in the Peace committee Meeting and the 4th respondent is in fact of receiving money, the petitioners have right to request the public authorities viz., the respondents 2 and 3 to inspect the affairs of the 4th respondent.

6. On the other hand, Mr.D.Krishnakumar, learned counsel appearing for the 4th respondent submits that in fact the petitioners want an enquiry to be conducted by the Registrar which is permissible only under Sec.36 of the Tamil Nadu Societies Registration Act, 1975. Sec.36 of the Tamil Nadu Societies Registration Act, 1975 reads as follows:

> 36. Power of Registrar to inquire into the affairs of registered Society:
>
> (1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or, if so moved by the District Collector hold or direct some person authorised by the Registrar by order in writing in his behalf to hold, an inquiry, into the constitution, working and financial condition of that registered society".
>
> (2)...

All the petitioners are not the members of the 4th respondent society as on date and therefore, to have an enquiry under Sec.36 of the Tamil Nadu Societies Registration Act, 1975, the petitioners have no locus-standi at all.

7. He also submits that 4th respondent has accepted to give water to the petitioners only as a matter of interim measure and not recognising the petitioners as members of the 4th respondent society and concession was given only to avoid any unpleasant situation.

8. On the other hand it is the case of the petitioner that the petitioners do not require any enquiry under Sec.36 of the Act but what is required is the Registrar to get information about the functioning of the Society, which will be covered under Sec.34 of the Act. Sec.34 of the Act reads as follows:

> 34 Power of Registrar to call for information or explanation:
>
> (1) Where the Registrar, on perusal of any document which a registered society is required to file with him under the

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> provisions of this Act, is of opinion that any information or explanation is necessary with respect to any matter to which such document purports to relate, he may, by order in writing, call on the registered society filing the document to furnish in writing such information or explanation within such time as he may specify in the order.

9. On the face of it, there is no difficulty to come to the conclusion that as far as membership of the petitioners is concerned, the same is in question and pending adjudication in the civil court, Admittedly the petitioners themselves filed O.S.No.216/2005, pending on the file of Sub Judge, Namakkal challenging the election conducted on 29.5.2003. It is only after the suit is disposed of, the status of the petitioner will be known. Pending the same, even if arrangements have been made by the Peace Committee, it cannot be said that the petitioners have become the members of the 4th respondent Society. The membership of the 4th respondent society depends upon the outcome of the civil suit and pending the same, the petitioners cannot compel the public authorities to invoke his jurisdiction under Sec.36 of the Act to conduct an enquiry.

10. A reference to Sec.34 of the Act shows that it does not relate to enquiry regarding functioning of the Society, it only enables the Registrar to obtain some information or explanation and that power will not enable him to conduct an enquiry.

11. On the other hand, functioning of the Society can be investigated only under Sec.36 of the Act which clearly contemplates that the minimum requirement is one third of the members of that registered Society.

12. Considering the above, I am of the considered view that the representation of the petitioners dated 10.10.2007 cannot be permitted to be enquired into by the District Registrar except leaving the petitioner to wait for the outcome of the suit. Therefore, the writ petition fails and the same is dismissed. No costs. Consequently, the connected W.P.M.P is closed.

13. Considering that the suit is of the year 2005, the learned Sub Judge, Namakkal is directed to give priority to O.S.No.216/2005 and dispose of the same expeditiously in any event, within a period of six months from the date of receipt of copy of this order.

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14. It is made clear that after the suit is disposed of and based on the decision of the suit, it is open to the petitioners to make their representation to the concerned authorities in respect of functioning of the 4th respondent.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sr

To

1.The Subordinate Judge,
Namakkal.

2. The Inspector General of Registration
Registration Department
Santhome High Road
Chennai-600 028

3. The District Registrar (Societies)
Namakkal District
Trichy Road
Namakkal Town
Namakkal District

4. The Tahsildar
Namakkal Taluk, Namakkal

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+1cc to Mr.D.Krishna Kumar, Advocate Sr 73372
+1cc to Mr.R.Karthikeyan, Advocate Sr 73535
+1cc to Govt. Pleader Sr 73813

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km/18.12.

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